

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

UNITED STATES OF AMERICA	)	
	)	Criminal No.: 3:00-CR-400-P
v.	)	
	)	Judge Jorge A. Solis
MARTIN NEWS AGENCY, INC.; and	)	
BENNETT T. MARTIN,	)	
	)	FILED: November 8, 2000
Defendants.	)	

UNITED STATES' RESPONSE TO  
DEFENDANT BENNETT T. MARTIN'S MOTION  
FOR PRODUCTION AND DISCOVERY PURSUANT TO RULE 16

Defendant Bennett T. Martin has filed a Motion seeking discovery pursuant to Rule 16 of the Federal Rules of Criminal Procedure.<sup>1</sup> The United States will comply fully with its discovery obligations under Rule 16. The response below, which tracks the Defendant's requests in his Motion, lists the information available to the Defendant.

I. RULE 16(a)(1)(A)--(Statements made by Defendant)

With the exception of documents produced by Defendant Martin News, which may contain statements made by Bennett T. Martin, the United States does not have in its possession any statements made by Bennett T. Martin. The United States will make available to Bennett T. Martin for inspection and copying all documents produced by Martin News.

II. Rule 16(a)(1)(B)--(Prior criminal record)

Presently, the United States has no prior criminal record of Bennett T. Martin. The United

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<sup>1</sup> Defendant Martin News Agency, Inc. ("Martin News"), did not file a discovery motion pursuant to Rule 16. The United States intends, however, to fully comply with its discovery obligations under Rule 16 with respect to Martin News.

States is still checking some sources and, should it learn of any prior criminal record, will forward such information to the Defendant promptly.

III. Rule 16 (a)(1)(C)--(Documents and tangible objects)

The United States will comply fully with its obligations under Rule 16(a)(1)(C). The request made by the Defendant in his Motion, however, is broader than what is required to be made available under Rule 16(a)(1)(C). The Defendant asks for, and is entitled to, documents and tangible objects material to his defense. But the Defendant is not entitled to all materials “intended for use by the Government as evidence at the trial of this cause. . . .” Defendant’s Motion, ¶ 4. Pursuant to Rule 16(a)(1)(C), the Defendant is entitled only to materials which are “intended for use by the government as evidence *in chief* at the trial . . . .” Fed. R. Crim. P. 16(a)(1)(C) (emphasis added). The United States will comply with Rule 16 (a)(1)(C). In so doing, the following documents and materials are available to Defendant Bennett T. Martin (as well as to Defendant Martin News):

A. The United States will make available all documents and materials in its possession obtained from Martin News.

B. The United States will make available all documents and materials in its possession acquired from Trinity News Company and C&S News Agency, Inc., competitors of Defendants Bennett T. Martin and Martin News in the Dallas-Fort Worth-Waxahachie area during the charged conspiracy period. The United States also intends to make available certain documents and materials acquired from Periodical Management Group, Inc. (“PMG”), which was the parent company of Trinity News during the charged conspiracy period. The government intends to make available PMG documents relating to its business (or Trinity News’s business) in the Dallas-Fort

Worth-Waxahachie area. Certain documents produced by PMG, however, will not be made available, including documents which relate to PMG's magazine distribution operations in geographic areas outside of the Dallas-Fort Worth-Waxahachie area. During the charged conspiracy period, PMG operated 13 magazine distribution agencies throughout the country.

C. The United States will make available all of the records in its possession obtained from retail customers of either Martin News, Trinity News, or C&S News, located within the Dallas-Fort Worth-Waxahachie area.

D. The United States will make available documents in its possession acquired from certain individuals, such as Hugh Crocker, who were active in the magazine distribution industry in the Dallas-Fort Worth-Waxahachie area during the charged conspiracy period.

The documents and materials described above are immediately available to Defendant Bennett T. Martin, as well as to Defendant Martin News. Arrangements to inspect and copy the originals of these documents and materials can be made by contacting one of the prosecutors for the government. Presently, these documents are located in the Antitrust Division's Cleveland Field Office. The United States is willing to discuss with defense counsel transporting these documents to Dallas under mutually agreeable terms which allow all parties to adequately prepare for trial. There are approximately 90 boxes of documents that the United States intends to make available pursuant to Rule 16. The United States understands that some of these documents, such as those produced to the government by Martin News pursuant to subpoenas *duces tecum*, have been copied and retained by the defendants.

IV. RULE 16(a)(1)(D)--(Reports of examinations and tests)

The United States will comply fully with its obligations under Rule 16(a)(1)(D). The request made by the Defendant in his Motion, however, is broader than what is required to be made available under this Rule. The Defendant asks for, and is entitled to, certain reports, examinations and tests material to his defense. But the Defendant is not entitled to all reports, examinations and tests “intended for use by the Government as evidence at trial.” Defendant’s Motion, ¶ 5. Pursuant to Rule 16(a)(1)(D), the Defendant is entitled only to reports, examinations and tests “intended for use by the government as evidence *in chief* at the trial . . . .” Fed. R. Crim. P. 16(a)(1)(C) (emphasis added). The United States will comply with Rule 16(a)(1)(D) by promptly disclosing any such materials should the government acquire them. Presently, the United States has no materials which fall within Rule 16(a)(1)(D).

Respectfully Submitted,

SCOTT M. WATSON  
Chief, Cleveland Field Office

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“/s/”  
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**CERTIFICATE OF CONFERENCE**

This is to certify that the undersigned attorney attempted to confer by telephone with Michael P. Gibson, counsel for Defendant Bennett T. Martin, on November 6, 2000, to discuss the government's response to Defendant's Motion. The undersigned counsel was advised that Mr. Gibson was unavailable. Mr. Gibson could not be reached prior to the filing of the within Memorandum.

SIGNED this 7th of November 2000.

"/s/"

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RICHARD T. HAMILTON, JR.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent via Federal Express to the Office of the Clerk of Court on this 7<sup>th</sup> day of November 2000. In addition, copies of the above-captioned pleading were served upon the defendants via facsimile and regular U.S. mail on this 7<sup>th</sup> day of November 2000.

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"/s/"

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